

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

97 MAY 22 AM 10:36

U.S. DISTRICT COURT
N.D. OF ALABAMA

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DAVID B. HICKS,

Plaintiff,

v.

WELLS FARGO GUARD SERVICES,

et al.,

Defendants.

479
CV-96-C-0497-S

ENTERED

MAY 22 1997

MEMORANDUM OPINION

In this action under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., and the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, et seq., plaintiff David B. Hicks ("plaintiff") claims that defendant Borg-Warner Protective Services Corporation ("defendant") failed to accommodate his perceived disability, and refused to grant him FMLA leave to treat his condition. Defendant has moved for summary judgment. The Court hereby grants the motion for summary judgment as to the FMLA claim, and denies the motion for summary judgment on the ADA claim since genuine issues of material fact exist with regard to the ADA claim.

The Family Medical Leave Act ("FMLA") provides eligible employees up to twelve weeks of unpaid leave per year in which to recover from a serious health condition or to care for a close family member with such a condition. 29 U.S.C. § 2106. An employer violates the Act by denying an eligible employee the same or similar employment upon returning from FMLA leave. 29 U.S.C. § 2615(a)(1).


“Serious health condition” is defined as “any period of incapacity requiring absence from work, school or other regular daily activities, of more than three calendar days, that also involves continuing treatment by a health care provider.” 29 C.F.R. § 825.114.

Plaintiff claims he was first diagnosed with PTSD in 1983 by a doctor in Ohio who recommended talking therapy. Plaintiff never sought therapy. He was next diagnosed with PTSD by a counselor at the Birmingham Veterans Center in March of 1995. Plaintiff was terminated in November of 1994.

The evidence establishes that plaintiff did not receive “continuing treatment by a health care provider” for PTSD during his employment with defendant. Therefore, summary judgment is due to be, and is hereby GRANTED on the FMLA claim.

A separate order embodying this opinion shall issue.

DONE this 21st day of May, 1997.


UNITED STATES DISTRICT JUDGE
U. W. CLEMON